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COMMISSION ON HUMAN RIGHTS
Fifty-second session
Item 4 of the provisional agenda

Open-ended Intersessional working
group on a draft United Nations
declaration on the rights of
indigenous peoples
First session
20 November - 1 December 1995

CONSIDERATION OF A DRAFT "UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES"

Information received from intergovernmental organizations

1. In its resolution 1995/32 of 3 March 1995, the Commission on Human Rights decided to establish an open-ended intersessional working group of the Commission on Human Rights to elaborate a draft declaration, considering the draft contained in the annex to resolution 1994/45 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, entitled "Draft United Nations declaration on the rights of indigenous peoples". In the same resolution the Commission requested the Secretary-General to invite Governments, intergovernmntal organizations, non-governmental organizations in consultative status with the Economic and Social Council and organizations of indigenous people authorized to participate to submit, for consideration by the Working Group, comments on the draft declaration submitted by the Sub-Commission. The Economic and Social Council in its resolution 1995/32 of 25 July 1995 authorized the establishment of the working group.

2. The present document contains information received from intergovernmental organizations. Further information will be made available in addenda to this document.

GE.95-14327 (E)

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

[Original: ENGLISH]
[28 April 1995]

1. Our office has a mandate to provide international protection to refugees and to seek durable solutions to their problems. In many cases refugees are individuals or groups belonging to indigenous peoples. In this context, any improvement of the respect of human rights of the indigenous peoples constitutes a contribution to prevent the circumstances which force people to flee and consequently decrease the number of refugees and asylum-seekers.

2. Therefore, the relevant articles of the draft declaration relating to the reaffirmation of the protection of indigenous individuals and peoples against any kind of discrimination have our support.

3. The standards of treatment of indigenous individuals and peoples are equally important. The issue of the forcible removal or transfer of population (arts. 7(c) and 10) seems to us of paramount importance. More specifically the notion of "return" as mentioned in article 10 should be further discussed and analysed.

4. Article 5 of the draft declaration, which states "Every indigenous individual has the right to a nationality" is also important for our Office due to the role assigned to UNHCR by the General Assembly (GA resolution 3274 (XXIX)), pursuant to article 11 of the Convention on the Reduction of Statelessness of 3 August 1961.

5. In this connection, the Executive Committee of the United Nations High Commissioner for Refugees during its session in October 1994, in its conclusion 74, stressed the responsibilities of UNHCR with respect to the prevention of statelessness and called upon UNHCR "to strengthen its efforts in this domain, including promoting accessions to the Convention on the Reduction of Statelessness and the Convention on the Status of Stateless Persons".

6. Finally, we have noted with interest article 11 of the draft declaration regarding the issue of recruitment of indigenous children into armed forces. This issue is equally of great concern to our Office.

UNITED NATIONS ENVIRONMENT PROGRAMME

[Original: English]
[29 May 1995]

1. In the light of the recognition in the draft declaration on the rights of indigenous peoples that respect for indigenous knowledge, cultures and traditional practices contribute to sustainable and equitable development and proper management of the environment, attention is drawn to relevant decisions of the First Meeting of the Conference of the Parties to the Convention on Biological Diversity, Nassau, the Bahamas, 28 November to 9 December 1994:

I. With respect to Financial Resources and Mechanisms, it was decided to adopt policy, strategy, programme priorities and eligibility criteria for access to and utilization of financial resources. One of the programme priorities highlighted was projects that strengthen the involvement of local and indigenous people in the conservation of biological diversity and sustainable use of its components.

II. It was decided with respect to the Medium-term Programme of Work of the Conference of the Parties 1995-1997 that "[I]n 1996, the third meeting of the Conference of the Parties may consider, inter alia ... [K]nowledge, innovations and practices of indigenous and local communities;" including the implementation of Article 8(j) of the Convention. Article 8(j) states:

> "Each Contracting Party shall, as far as possible and as appropriate ... [S]ubject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;"

III. It was also decided, with regard to preparation of the participation of the Convention on Biological Diversity in the third session of the Commission on Sustainable Development, that the Conference of the Parties should inform the Commission of its intention to take immediate action in a number of areas which required coordination with other United Nations bodies, including future work on the protection of traditional knowledge and practices of indigenous and local communities relevant to conservation and sustainable use.

2. The inclusion of indigenous heritage within Agenda 21 and the Convention on Biological Diversity and the subsequent discussion thereof, including the decisions made in that regard in Nassau, reflect a recognition of the inherent dignity and the unique contribution of indigenous people to the development and plurality of society. UNEP, assigned as task manager for chapter 15 of Agenda 21 by the Commission on Sustainable Development, and within its role and responsibilities as the organization providing the Secretariat for the Convention on Biological Diversity, will continue to facilitate and catalyse the cooperation of States in recognizing the rights of indigenous people.

3. With respect to article 28 of the draft declaration, and in particular with respect to the text which states that "[M]ilitary activities shall not take place in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned", your attention is drawn to UNEP's activities in a related area. In its decision 17/5 of 21 May 1993, entitled "Application of environmental norms by military

establishments", UNEP's Governing Council noted the role of the military sector in the promotion of national and environmental goals and objectives in the transition to sustainable development and recognized the need for early action. In that decision, the Council encouraged Governments to establish a national environmental policy for the military sector and invited the Executive Director to collect information on:

(a) National preparations and activities in order to ascertain that their military establishments conform to their national environmental norms in the treatment and disposal of hazardous wastes;

(b) The contribution of the military sector in the achievement of national environmental policies;

(c) Assessment of the damage as well as the need for and feasibility of the clean-up and restoration of areas where damage to the environment has been caused by military activities.

4. At its second session, held in New York in May 1994, the Commission on Sustainable Development recalled and reaffirmed decision 17/5 and urged Governments to take action to implement it fully. The Commission invited UNEP to consider the feasibility of arranging regional meetings, in cooperation with the United Nations regional commissions and regional organizations, on the implementation of the decision and on how national environmental plans for the military establishment relating to hazardous waste management could be designed and implemented.

5. Pursuant to Governing Council decision 17/5 and the Commission's invitation, UNEP in cooperation with the Economic Commission for Europe (ECE) will convene a Meeting on Military Activities and the Environment, to be hosted by the Government of Sweden in Linkoping from 27 to 30 June 1995. The meeting taking into account the relevant experience of ECE member States, will consider the role of the military sector in the promotion of national environmental policy for the sector, including practical ways and means of reaching environmental policy objectives.

6. The meeting will be attended by representatives of both environmental and military authorities in the countries concerned. It is to convene further meetings in other regions based on the conclusions and any recommendations made in Sweden. In that respect we would suggest that article 28 of the draft declaration on the rights of indigenous peoples would be an important factor to consider in developing and promoting national environmental policy for the military sector. We would be pleased to provide you with the report of the Linkoping Meeting and information with respect to further regional meetings as available.

FOOD AND AGRICULTURAL ORGANIZATION OF THE UNITED NATIONS

[Original: English]
[27 June 1995]

1. The subject of the rights of indigenous peoples is important for FAO and therefore the Organization welcomes your initiative to circulate this draft

for comments prior to using it to elaborate a final declaration. After a careful review, we have some reservations on parts of the declaration in its present form, as it appears to be not very consistent and realistic in some areas. Some examples are indicated below:

A statement which appears in several parts of the declaration (preambular para. 4, arts. 9, 11(d), 16, 18, etc.) indicates that indigenous peoples should be free from discrimination of any kind, while the whole declaration makes frequent reference to positive discrimination ("affirmative action" which gives indigenous peoples "special" treatment, different from and presumably better than that given to other groups). Article 22, for example, mandates positive discrimination through the provision of "special" and immediate measures for improving employment training, housing, sanitation, health and social security for indigenous people. Only article 2 specifies that what should be avoided is "adverse discrimination".

Article 3 refers to the right of indigenous peoples to complete self-determination, including their political status, while at the same time having full rights to participate in all services which the State provides to others and, additionally, to have "special" services and rights only for them (arts. 11, 14, 22, 26, 29, etc.). Also, they must be protected from armed conflict but they shall have no obligation to go into any armed forces (art. 11). Article 15 says that indigenous people have the right to have their own education system in their own language, which is commendable; but then adds that indigenous children living outside their communities have the right to education in their own culture and language at the State's expense, which could be difficult to implement in many countries due to resource constraints.

Article 27 says that "indigenous peoples have the right to restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent". Without provision for analysis of the specific situation nor any reference to the time frame for defining "traditionally owned", the potential for new conflicts would be significant, even between differing indigenous groups who have at various times in history occupied land in consecutive periods.

As regards the role of fisheries mentioned in the declaration, we would suggest that the declaration more explicitly highlight the importance of fisheries for food security for indigenous peoples. In addition, it might also be useful to further highlight that some of the projects (e.g. mines) mentioned in article 30 very often have significant impact on important coastal and river fisheries on which indigenous people depend for subsistence and economic security. All too often, these downstream impacts of major inland project developments are ignored to the detriment of indigenous peoples.

It has been stated that the United Nations shall take the necessary steps to ensure the implementation of this declaration. Since the term "indigenous" has not been defined anywhere in the document, and

considering that "indigenous" means different things in different parts of the world, it is extremely difficult to know, a priori, where one would draw the line of United Nations intervention.

2. We consider that the draft declaration should be modified in such a way as to provide a more realistic and implementable basis for protecting the rights of indigenous peoples and other minorities. FAO would be very willing to review and comment on any new draft that the Working Group might wish to submit to the Organization.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

[Original: English]
[24 July 1995]

1. In the preamble of this draft declaration, particularly its first paragraph referring to "the right of all peoples to be different", it would be pertinent to make reference to a number of relevant UNESCO instruments, such as the Convention against Discrimination in Education (1960) the Recommendation on Participation by the People at Large in Cultural Life (1976), the Declaration of the Principles of International Cultural Co-operation (1966), the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972), the Declaration on Race and Racial Prejudice (1978). The preamble could also include a reference to the Vienna Declaration and Programme of Action (1993).

2. Under article 7, subparagraph (e), an additional subparagraph should be added, as follows: "The international community has the duty to uphold these rights of the indigenous peoples.".

3. It may be convenient, for the sake of clarity, to group together articles 8, 12, 13, 14, 15, 16 and 29 under Part III, which would thus deal exclusively with cultural rights.

4. Articles 23 and 30, relating to the right to development, should follow one another and reference could be made in this context to the implementation of the United Nations General Assembly Declaration on the Right to Development.

5. Consideration might be given to the deletion of article 34 authorizing the community to impose responsibilities on individuals, which gives an impression of undermining the spirit of freedom and notion of liberty, and does not concord with articles 7 and 39 referring to both collective and individual rights.

6. Finally, in the context of article 41 concerning the implementation of the declaration, it may be opportune to mention the monitoring role of the proposed forum of indigenous peoples.

INTERNATIONAL POSTAL UNION

[Original: French]
[18 May 1995]

1. UPU wishes to draw attention to the social, economic and humanitarian role of the post. UPU tries to maintain postal relations between countries at war and to ensure that military conflicts or wars do not interrupt the exchange of correspondence internationally. In this spirit, we would propose adding the right to receive and dispatch correspondence to the rights mentioned in article 17 of the draft.

2. Article 40 calls on specialized agencies to collaborate in providing technical assistance. UPU supports the wording of this article and will try to mobilize the maximum amount of resources to implement aid and technical assistance action.